

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF SUNBEAM WATER) CASE NO. SNB-W-22-01
COMPANY’S FAILURE TO COMPLY)
WITH IDAHO PUBLIC UTILITIES)
COMMISSION REPORTING AND FISCAL) ORDER NO. 35905
REQUIREMENTS)
)

This matter came before the Idaho Public Utilities Commission (“Commission”) on the Commission Staff’s (“Staff”) request to order Sunbeam Water (“Company”) to appear and show cause why the Commission should not impose penalties for the Company’s violations of its obligations under state law and the Commission’s rules.

On December 9, 2022, the Commission issued a Notice of Hearing and Order to Show Cause directing the Company to appear at a show cause hearing (“Hearing”) to show cause why the Commission should not impose penalties for violations of Idaho Public Utilities Law. Order No. 35619.

On February 16, 2023, after the Company failed to appear at the Hearing scheduled for January 5, 2023, the Commission issued Order No. 35680 imposing penalties and ordering that several remedial actions be taken to ensure compliance. Order No. 35680 gave the Company (1) 30 days to submit its annual reports and pay its associated assessment fees;¹ and (2) 45 days to pay the penalties assessed in that Order.

On March 28, 2023, the Company petitioned for reconsideration of Order No. 35680. On April 18, 2023, this petition was denied. Order No. 35749.

On April 25, 2023, Staff submitted audit requests to the Company—with responses due by May 16, 2023. The Company provided the necessary documentation before the May 16, 2023, deadline.

On May 30, 2023, the Commission issued a Notice a Public Workshop, setting a public workshop on June 28, 2023.² Order No. 35797.

¹ The Company filed its 2017 through 2021 annual Gross Intrastate Operating Revenue (“GIOR”) statements on January 4, 2023. While not explicitly ordered in Order No. 35680, the Company also met its statutory duty and filed its 2022 GIOR in a timely manner. The Company likewise filed its 2017 through 2022 annual reports on March 17, 2023. The Company has not yet paid its assessment fees.

² Staff inspected the Company’s water system on June 28, 2023, the same day it held a public workshop. *See* Order Nos. 35680 and 35797.

On July 31, 2023, the Company submitted a Second Motion to Reconsider Penalties (“Petition”) as well as an Affidavit in Support of the Second Motion to Reconsider Penalties (“Affidavit”).³

This Commission now issues this Order dismissing the Company’s Petition, as discussed in detail below.

SECOND PETITION FOR RECONSIDERATION

The Petition noted that the Commission imposed penalties in this case for previous omissions by the Company. The Company explained that it complied with the Commission’s filing requirements, and that the Company is financially unable to pay the previously imposed penalties and other costs.

In its Affidavit the Company stated that it had complied with all the requirements of Order No. 35680. The Company further stated that it did not have the ability to pay either the penalties or the assessment fees plus interest imposed in this case. The Company noted that it had no cash reserves and was operating at a deficit. The Company also explained that the disclosures the Company provided previously could be referenced to confirm its financial situation. The Affidavit noted that the Company was investigating the possibility of filing a rate case and has explored—and continues to explore—the prospect of selling the Company to another provider.

LEGAL STANDARD ON RECONSIDERATION

Reconsideration affords parties an opportunity to bring to the Commission’s attention any matter previously determined and provides the Commission opportunity to rectify any mistake before the matter is appealed to the Supreme Court. *Washington Water Power Co. v. Idaho Public Utilities Comm’n*, 1980, 101 Idaho 567, 617 P.2d 1242. Any person or public utility has the right to petition for reconsideration in respect to any matter determined in a Commission order. *Idaho Code* § 61-626(1). The petitioner has 21 days from the date of the Final Order in which to ask for reconsideration. *Id.* “Within twenty-eight (28) days after the filing of a petition for reconsideration the commission shall determine whether or not it will grant such reconsideration, and make and enter its order accordingly.” *Idaho Code* § 61-626(2). “If after reconsideration, including consideration of matters arising since the making of the order, the commission shall be of the opinion that the original order or any part thereof is in any respect unjust or unwarranted or should be changed, the commission may abrogate or change the same.” *Idaho Code* § 61-626(3).

³ Craig W. Parrish, the attorney for the Company, is the affiant.

Idaho Code § 61-624 also allows for the Commission to rescind, alter, or amend a decision “at any time” provided that those affected have had an opportunity to be heard. Citing this statute, Commission Rule of Procedure 326 states that any party may petition the Commission to rescind, alter, or amend an order under *Idaho Code* § 61-624 if that party is able to show that their circumstances have changed, new information has become available, or show that “other good and sufficient reasons exist” that support the changing of the previous order. IDAPA 31.01.01.326.01. Commission Rule of Procedure 326 likewise allows the Commission to change an order on its own motion if all interested parties have a chance to weigh on the matter through an evidentiary hearing or written filings. IDAPA 31.01.01.326.02.

Commission Rule of Procedure 332 authorizes the Commission to grant reconsideration on its own motion or on the motion of an interested party. IDAPA 31.01.01.332. This Rule also allows the Commission to dismiss issues on reconsideration when those issues are not supported by a specific explanation relevant to the case. *Id.* “Petitions for reconsideration must specify (a) why the order or any issue decided in it is unreasonable, unlawful, erroneous or not in conformity with the law, and (b) the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted.” IDAPA 31.01.01.331.01.

COMMISSION FINDINGS AND DECISION

In Order No. 35680 the Commission imposed “a penalty of \$2,000 on the Company for its failure to file its 2021 annual report by April 16, 2022.” Order No. 35680 at 6. The Commission also imposed a \$2,000 penalty on the Company for its failure to attend a Show Cause Hearing the Company was ordered to appear at. *See* Order Nos. 35619 and 35680.

The Company’s Petition does not explicitly state why Order No. 35680 was “unreasonable, unlawful, erroneous or not in conformity with the law” as required by Commission Rule of Procedure 331.01. However, the Company implied that the regulatory fees, interest, and penalties due in this case were unreasonable due to financial difficulties it is experiencing. The Company also does not explicitly outline “the nature and quantity of evidence” that would undergird a Commission determination to grant the relief requested. *Id.* While it did not expressly cite to the record or provide any exhibits, the Company previously complied with Staff’s audit of the Company’s financials and the Affidavit referred to the “disclosures provided” to justify its inability to pay. Affidavit at 1. The Company’s GIOR reports from 2017 onward are a part of the record for

this case. Of note, Staff concluded that the Company has operated at a net loss averaging “\$5,288 per year” for the last five years. Affidavit of Travis Culbertson at 2.

Idaho Code § 61-1001 *et seq.*, requires the assessment and payment of regulatory fees. The Company did not claim that any of the assessed regulatory fees were excessive in a timely fashion. *See Idaho Code* § 61-1007. Thus, the Commission cannot waive the Company’s remaining unpaid assessment fees and all accrued interest. *Idaho Code* §§ 61-1001 *et seq.* The Company did not fully pay its assessment fees from 2012 onward. The unpaid amount from those years is due with 6 percent interest for each year that each unpaid fee was late. Accordingly, the Company owes \$1,043.21 in assessment fees and accrued interest (as of the publishing of this Order).

Idaho Code §§ 61-624, 61-626(3), and IDAPA 31.01.01.326 does give the Commission latitude to waive the previous imposition of penalties on the Company if the Commission so chooses. IDAPA 31.01.01.326.01 allows the Commission to do this if it believes that the Company has stated that circumstances have changed, provided new information, or shown other good reasons to support the waiver of the penalties imposed. Likewise, the Commission could waive these penalties on its own motion if it determines that circumstances have changed. IDAPA 31.01.01.326.02. The Company filed its annual reports but did not pay its assessment plus all accrued interest. Further, the Company has not addressed why it failed to appear at the Show Cause Hearing. As a result, the Commission is currently unwilling to waive the penalties imposed in Order No. 35680. However, as discussed below, the Commission is willing to provide the Company an opportunity to redeem itself.

The Commission finds that it is fair, just, and reasonable to conditionally suspend enforcement of the penalties imposed in Order No. 35680 in recognition of its efforts to partially comply with the requirements set forth in Order No. 35680. The Company has not fully complied with the Commission’s requirements as it stated in its Petition and Affidavit. Specifically, meeting its financial obligations with the Commission was required by Order No. 35680. While the Commission has extended leniency to the Company, the Commission reminds it that the Company has only imposed a small fraction of the available, potential penalties upon the Company in Order No. 35680. The Commission has full authority to later lift the suspension of the enforcement of the penalties imposed by Order No. 35680 as well as the authority to impose additional penalties. The Commission will be increasingly motivated to exercise this authority should the Company ignore the Commission’s mandate to pay its assessment fees and accrued interest. The Commission

has a statutory and mandate to collect this minimum amount of assessment fees and accrued interest. Given the Company's recent increased efforts to come into compliance, the Commission is hopeful that the Company will pay its assessment fees of its own volition in a timely manner.

The Commission does not believe that the Company has shown why Order No. 35680 was "unreasonable, unlawful, erroneous or not in conformity with the law." IDAPA 31.01.01.331.01. However, the Commission finds that certain circumstances have changed in this case. Specifically, the Company has submitted its annual reports, submitted its GIORs, and coordinated with Staff in facilitating a public workshop and an inspection of the service area. Therefore, in recognition of the Company's efforts to come into compliance, the Commission shall suspend the enforcement of the penalties imposed by Order No. 35680 for the present time pursuant to *Idaho Code* § 61-626(3) and IDAPA 31.01.01.326. All other requests for relief in the Company's Petition are dismissed.

ORDER

IT IS HEREBY ORDERED that the Company's Petition for a waiver of its penalties and assessment fees is denied. However, the Commission shall conditionally suspend the enforcement of the penalties imposed by Commission Order No. 35680 until such a time as a Commission order shall dictate otherwise.

IT IS FURTHER ORDERED that the Company must pay its past due assessment fees and accumulated interest in coordination with Staff.

THIS IS A FINAL ORDER DENYING RECONSIDERATION. Any party aggrieved by this Order, or other final or interlocutory Orders previously issued in this case, may appeal to the Supreme Court of Idaho within forty-two (42) days pursuant to the Public Utilities Law and the Idaho Appellate Rules. *Idaho Code* § 61-627; I.A.R. 14.

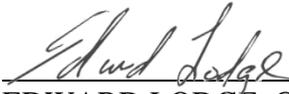
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 28th day of August 2023.



ERIC ANDERSON, PRESIDENT

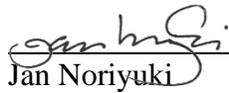


JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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